

summary of expected testimony, or in the case of a Coast Guard witness, any prior statement or statements, to prepare for cross-examination and for the presentation of the party's case.

§20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the Administrative Law Judge may take such action as is just, including but not limited to the following:

(a) Infer that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the class II civil penalty proceeding, designated facts will be considered to be established.

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon documents or other evidence withheld.

(d) Order that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.

(e) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown.

§20.608 Subpoenas.

(a) The Administrative Law Judge may issue subpoenas for the attendance and the giving of testimony or for the production of books, papers, documents, or any other relevant evidence. Parties shall request the issuance of subpoenas by motion.

(b) Upon application and for good cause shown, the Administrative Law Judge shall apply to the United States District Court to issue an order compelling the appearance and testimony of witnesses or for the production of evidence.

(c) The person making service shall prepare a written statement setting forth the date, time and manner of service or setting forth the reasons the subpoena was not served. The statement shall be under oath or affirmed under the penalties of perjury. The statement shall be attached to a copy

of the subpoena and returned to the Administrative Law Judge who issued the subpoena.

§20.609 Motions to quash or modify.

(a) The person to whom a subpoena is directed may, by motion with notice to the party requesting the subpoena, petition the Administrative Law Judge to quash or modify the subpoena.

(b) Except when made at a hearing, the motion must be filed within 10 days after service of a subpoena for attendance of a witness or a subpoena for production of evidence, but in any event at or before the time specified in the subpoena for compliance.

(c) If served at the hearing, the person to whom the subpoena is directed may, by oral application at the hearing, or within a reasonable time fixed by the Administrative Law Judge, petition the Administrative Law Judge to quash or modify the subpoena.

(d) The Administrative Law Judge may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue or may deny the request.

Subpart G—Hearings

§20.701 Standard of proof.

The party with the burden of proof shall prove the party's case or affirmative defense by a preponderance of the evidence.

§20.702 Burden of proof.

(a) Except in the case of an affirmative defense, or as provided in paragraph (b) of this section, the burden of proof is on the Coast Guard.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§20.703 Presumptions.

In all class II civil penalty proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but a presumption does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the